



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Via First-Class Mail

Jan Witold Baran, Esq.
Wiley Rein LLP
1776 K Street, N. W.
Washington, D.C. 20006

DEC - 8 2015

RE: MURs 6563 and 6733
Every Republican Is Crucial (ERICPAC)
and Melinda Fowler Allen in her official
capacity as treasurer
Eric Cantor

Dear Mr. Baran:

The Federal Election Commission notified your above-named clients on May 3, 2012, of a complaint in MUR 6563, and on May 8, 2013, of a complaint in MUR 6733, both of which alleged violations of the Federal Election Campaign Act of 1971, as amended.

On November 19, 2015, the Commission found, on the basis of the information in the complaints, and information provided by you, that there is no reason to believe that Every Republican Is Crucial (ERICPAC) and its treasurer or that Representative Eric Cantor violated 52 U.S.C. § 30116(a). Accordingly, the Commission closed its file in these matters as it pertains to Every Republican Is Crucial (ERICPAC) and its treasurer and Representative Eric Cantor.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that these matters are still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Tanya Senanayake, the attorney assigned to this matter, at (202) 694-1571.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1608440-1-10

1 **FEDERAL ELECTION COMMISSION**

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3 RESPONDENT: Representative Eric Cantor MURs 6563 and 6733
4 Every Republican Is Crucial (ERICPAC)
5 and Melinda Fowler Allen in her official
6 capacity as treasurer
7

8 **FACTUAL AND LEGAL ANALYSIS**

9 **I. INTRODUCTION**

10 This matter arises from two Complaints that allege violations of the Federal Election
11 Campaign Act of 1971, as amended ("the Act"), arising from then-Representative Eric Cantor
12 (7th District, Virginia) and Every Republican Is Crucial (ERICPAC), Cantor's leadership PAC,
13 making a \$25,000 contribution purportedly solicited by then-Representative Aaron Schock (18th
14 District, Illinois) to the Campaign for Primary Accountability Inc. ("CPA"), an independent-
15 expenditure-only political committee that supported Representative Adam Kinzinger's candidacy
16 in the 2012 primary election in Illinois's 16th Congressional District.

17 The Complaint in MUR 6733 bases its allegations on an Office of Congressional Ethics
18 ("OCE") investigative report ("OCE Report") submitted to the House of Representatives
19 Committee on Ethics ("House Ethics").¹

20 ERICPAC and Cantor respond that the Complaints do not contain any allegation of
21 wrongdoing by them, that Cantor did not solicit any improper contributions, and that because all
22 of ERICPAC's funds comply with the limitations, prohibitions, and reporting requirements of the
23 Act, it made a lawful donation to CPA.² ERICPAC further asserts that it properly disclosed its

¹ See Compl. at 2, Attach. A, MUR 6733; OCE Review No. 12-9525, adopted Aug. 24, 2012, *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/OCE%20Report%20Rep.%20Schock.pdf>. On February 6, 2013, OCE publicly released its report that it referred to House Ethics on August 30, 2012. See FEBRUARY 6, 2013—OCE REFERRAL REGARDING REP. AARON SCHOCK, *available at* <http://oce.house.gov/2013/02/february-6-2013---oce-referral-regarding-rep-aaron-schock.html>.

² ERICPAC Resp. at 1-6 (June 12, 2012), MUR 6563; Cantor Resp. at 1-2 (June 11, 2013), MUR 6563; ERICPAC and Cantor Resp. at 1-5 (June 17, 2013), MUR 6733.

1 contribution to CPA in its report filed with the FEC.³ Consequently, ERICPAC and Cantor state
2 that they should be dismissed as Respondents in these MURs.⁴

3 Based on the available information, the Commission finds no reason to believe that
4 ERICPAC or Cantor made an excessive contribution in violation of § 30116(a).

5 II. FACTUAL AND LEGAL ANALYSIS

6 A. Factual Summary

7 Representatives Adam Kinzinger and Don Manzullo were candidates in the Illinois 16th
8 Congressional District primary election held on March 20, 2012. Information in the
9 Commission's possession indicates that Schock supported Kinzinger and sought to assist him.
10 Further information indicates that Schock learned that CPA was broadcasting advertisements
11 opposing Manzullo and believed that CPA needed additional funds to be able to air the
12 advertisements again prior to the election. Schock's first-person description of relevant events
13 was quoted in a press article cited in the MUR 6563 Complaint:

14 "The final week of the campaign, it got very tight, it was neck and neck. I
15 was trying to do everything I could to help the Kinzinger campaign and
16 reached out to the committee that was running ads in support of them."
17 "They were basically running the television ads for him, [and] I asked if I
18 could specify a donation to them," to be used only in the Illinois primary.

19
20 "And they said I could."⁵

3 ERICPAC Resp. at 4, MUR 6563; ERICPAC and Cantor Resp. at 5, MUR 6733.

4 ERICPAC Resp. at 4, 6, MUR 6563; Cantor Resp. at 1-3, MUR 6563; ERICPAC and Cantor Resp. at 3-4, MUR 6733.

5 John Stanton, *Eric Cantor Gave \$25K to Anti-Incumbent PAC to Aid Adam Kinzinger*, ROLL CALL, Apr. 6, 2012, http://www.rollcall.com/news/Eric_Cantor_Gave_Money_to_Super_PAC_to_Aid_Adam_Kinzinger-213651-1.html [hereinafter Stanton, *Cantor Gave \$25K*] (alteration in original). CPA aired and distributed independent expenditure advertisements opposing Manzullo totaling \$239,531.68, all during a period from March 8 through March 19, 2012. The only expenditures for television advertising — in the amounts of \$15,000; \$25,000; and \$35,000 respectively — all occurred on March 16 or 17, 2012, after the ERICPAC contribution. See CPA 2012 Amended April Monthly Report at 38; CPA 24/48 Hour Notice of Independent Expenditures (Mar. 19, 2012).

1 CPA personnel state that Rodney Davis, then a staffer for Representative John Shimkus
2 (15th District, Illinois),⁶ was the contact person for the \$25,000 ERICPAC contribution that CPA
3 received on March 15, 2012, for the Kinzinger race.⁷ CPA Development Coordinator Hannah
4 Christian states that she contacted Davis to get the complete contact information for the donors
5 who made contributions by wire transfer and was supposed to let Davis know when CPA
6 received the wire transfer and when CPA made the media buys.⁸ CPA Managing Director Jamie
7 Story says that Davis wanted confirmation that CPA spent \$100,000 on Kinzinger's race.⁹ In an
8 e-mail to Story on March 16, 2012, Davis, using his "volunteersforshimkus.org" address, asked
9 for confirmation that CPA spent "at least \$100,000 . . . on Rockford [Illinois] TV and any cable
10 outlets you have added."¹⁰

CPA's television advertisement is described in an e-mail from Rob Collins, Cantor's former Chief of Staff, as "the ad that Shimkus, Schock and Cantor have sent money in to support that the Campaign for Primary Accountability is running." OCE Report Ex. 23 at 12-9525_0140 (E-mail from Rob Collins to Ted Burnes (Mar. 15, 2012 10:24 AM)).

⁶ Davis was elected in November 2012 to be the U.S. Representative from the 13th District in Illinois.

⁷ See CPA 2012 Amended April Monthly Report at 9 (July 23, 2012); OCE Report Ex. 4 at 12-9525_0021 (OCE Mem. of Interview of CPA Managing Director (Jamie Story) ¶ 12 ("Story MOI")); OCE Report Ex. 6 at 12-9525_0028 (OCE Mem. of Interview of CPA Development Coordinator (Hannah Christian) ¶ 26 ("Christian MOI")). The OCE Report usually refers to CPA's Managing Director and Development Coordinator by their positions rather than their names, but they are identified in each other's interviews. See Story MOI ¶¶ 2, 6; Christian MOI ¶¶ 2, 6.

⁸ Christian MOI ¶ 25.

⁹ See Story MOI ¶ 18.

¹⁰ OCE Report Ex. 5 at 12-9525_024 (E-mail from Rodney Davis to Jamie Story (Mar. 16, 2012 02:27 PM CDT)). The e-mail reads "Jamie, the \$25k check yesterday was rescinded, and the money was wired today from the 18th Congressional District PAC. That puts you at \$90,000 already wired. \$10,000 more may have been wired today from Canning, but I am not sure there. Have John get me a copy of the buy that shows at least \$100,000 being spent on Rockford TV and any cable outlets you have added. Thx." *Id.* CPA did not disclose the receipt of a contribution from "Canning," and Story says she did not have any knowledge of such an individual. See Story MOI ¶ 17. "John" appears to refer to CPA's "head Republican strategist" referenced in an e-mail from Story to Davis. OCE Report Ex. 14 at 12-9525_0115 (E-mail from Jamie Story to Rodney Davis (Mar. 14, 2012 01:20 PM CDT)).

1 The information available to the Commission indicates that Schock, with knowledge of a
2 \$25,000 commitment for a contribution to CPA from the 18th District Republican Central
3 Committee (Federal Account), reached out to Cantor to see if Cantor could raise additional funds
4 to support pro-Kinzingers ads by CPA. Schock was quoted in the press as stating to Cantor: "I
5 said, 'Look, I'm going to do \$25,000 [specifically] for the Kinzinger campaign for the television
6 campaign' and said, 'Can you match that?'" "And he said, 'Absolutely.'" ¹¹

7 ERICPAC contributed \$25,000 to CPA on March 16, 2012. ¹² Cantor's campaign
8 spokesman reportedly stated that Cantor made the donation at the request of Schock; his
9 description of the exchange was quoted in a news article as follows: "On Thursday, March 15,
10 2012, Leader Cantor was asked by Congressman Schock to contribute to an organization that
11 was supporting Adam Kinzinger in the Illinois election of March 20. ERICPAC subsequently
12 made a contribution with the understanding that those funds would be used only in the effort to
13 support Congressman Kinzinger." ¹³

14 **B. Legal Analysis**

15 **1. Applicable Law**

16 Under the Act and Commission regulations, federal candidates and officeholders; agents
17 of federal candidates and officeholders; and entities directly or indirectly established, financed,
18 maintained, controlled by, or acting on behalf of federal candidates or officeholders cannot

¹¹ See Stanton, *Cantor Gave \$25K*, *supra*. The bracketed term "[specifically]" appears in Schock's quote in the article. The article incorrectly reported that Schock's leadership PAC, GOP Generation Y Fund, contributed \$25,000 to CPA.

¹² ERICPAC 2012 April Monthly Report at 74 (Apr. 20, 2012).

¹³ Stanton, *Cantor Gave \$25K*, *supra*. Cantor described Schock's request in similar terms: Schock called Cantor and asked whether he would give \$25,000 to a super PAC operating in Illinois in connection with Kinzinger's race. See OCE Report Ex. 8 at 12-9525_0087 (OCE Mem. of Interview of Cantor ¶ 8).

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1 “solicit” or “direct” funds in connection with an election for federal office, unless the funds are
2 subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 52 U.S.C.
3 § 30125(e)(1)(A); 11 C.F.R. §§ 300.60, 300.61.

4 The Act limits contributions to non-authorized, non-party committees to \$5,000 in any
5 calendar year. 52 U.S.C. § 30116(a)(1)(C). The Act also prohibits any candidate or political
6 committee from knowingly accepting any contribution in violation of § 30116. *Id.* § 30116(f).

7 Following the decisions in *Citizens United v. FEC*¹⁴ and *SpeechNow.org v. FEC*,¹⁵ the
8 Commission concluded in Advisory Op. 2010-11 (Commonsense Ten) that individuals, political
9 committees, corporations, and labor organizations may make unlimited contributions to
10 independent expenditure-only political committees, and that such committees may solicit
11 unlimited contributions from such persons. Thus, committees such as CPA that have registered
12 with the Commission may accept unlimited contributions from individuals, political committees,
13 corporations, and labor organizations.¹⁶

14 2. There Is No Reason to Believe Respondents Made an Excessive
15 Contribution

16 Political committees like CPA that make only independent expenditures, and do not make
17 any contributions,¹⁷ may accept unlimited contributions from individuals and from other political

¹⁴ 558 U.S. 310 (2010).

¹⁵ 599 F.3d 686 (D.C. Cir. 2010).

¹⁶ *See* Letter from Jonathan Martin, CPA Treasurer, to FEC (Sept. 27, 2011) (notifying the Commission that CPA intends to make independent expenditures and will not use its funds to make contributions), *available at* <http://docquery.fec.gov/pdf/262/11030664262/11030664262.pdf>.

¹⁷ CPA has not established a separate account for contributions subject to the limitations and prohibitions of the Act. *See* Stipulated Order and Consent Judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C Aug. 19, 2011); *see also* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

1 committees like ERICPAC.¹⁸ Accordingly, ERICPAC, in making a \$25,000 contribution to
2 CPA, has not made an excessive contribution. Further, Cantor has not made an excessive
3 contribution. The Commission thus finds no reason to believe that ERICPAC or Cantor violated
4 52 U.S.C. § 30116(a).

¹⁸ See AO 2010-1.1 (Commonsense Ten); *Citizens United v. FEC*; *SpeechNow.org v. FEC*;

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